



A G E N D A

General Plan/LCP Implementation Committee

February 18, 2009

3:30 p.m.

City Council Chambers

1. Approve Action Minutes from January 28, 2008
Attachment No. 1 3:30-3:35pm
2. Coastal Land Use Plan Amendment: Progress Report from staff
3:35-3:50pm
3. Draft Zoning Code Review
 - A. Development on Bluffs and Canyons
 - B. Environmental Study Area (ESA) Regulations
 - C. Parking – Eating and Drinking Establishments
Attachment No. 2 3:50-5:45pm
4. Items for Future Agenda 5:45-5:50pm
5. Committee Meeting Schedule - Set dates 5:50-5:55pm
6. Public Comments on non-agenda items 5:50-6:00pm
7. Adjourn to March ___, 2009, 3:30 p.m.

Attachments:

1. Draft Action Minutes for January 28, 2009
2. Draft Zoning Code Review support material

ATTACHMENT NO. 1

Draft Action Minutes From January 28, 2009



CITY OF NEWPORT BEACH GENERAL PLAN/LCP IMPLEMENTATION COMMITTEE

DRAFT ACTION MINUTES

Action Minutes of the General Plan/LCP Implementation Committee held at the City Council Chambers, City of Newport Beach, on **Wednesday, January 28, 2009**

Members Present:

X	Ed Selich, Mayor, Chairman
E	Leslie Daigle, Mayor Pro Tem
X	Don Webb, Council Member
X	Barry Eaton, Planning Commissioner
X	Robert Hawkins, Planning Commissioner
X	Michael Toerge, Planning Commissioner

Advisory Group Members Present:

	Mark Cross
	Larry Frapwell
	William Guidero
X	Ian Harrison
X	Brion Jeannette
	Don Krotee
X	Todd Schooler
	Kevin Weeda
	Dennis Wood

Staff Representatives:

X	Sharon Wood, Assistant City Manager
	David Lepo, Planning Director
	Aaron Harp, City Attorney
X	James Campbell, Senior Planner
X	Gregg Ramirez, Senior Planner
X	Melinda Whelan, Assistant Planner

E = Excused Absence

Committee Actions

1. **Agenda Item No. 1** – Approval of minutes of January 14, 2008.

Action: Committee approved draft minutes.

Vote: Consensus

2. Agenda Item No. 3 – Zoning Code Re-Write

Action: The Committee began with the first item A. Alley Setbacks and Encroachments with the Public Works and General Services Directors in attendance for discussion. Regarding this issue the Committee and Advisory Members discussed and directed staff to:

- prohibit second and third floor 2.5 foot encroachment into 5-foot alley setbacks on corner lots at the intersection of two 10-foot alleys
- at the intersections of two 10-foot alleys, require that (in addition to the 5-foot alley setback remaining clear of obstructions) an additional 5-feet 45 degree angle of the side yard adjacent to the alley remain clear of all obstructions
- require an 8-foot minimum rear alley setback for the first floor garage when access is across from a side yard adjacent to an alley
- continue discussion regarding parking within alley setbacks to a later date to give staff time to discuss with appropriate Council Members

The Committee reviewed comments prepared by Committee members Eaton and Hawkins regarding the remaining agenda items B. Residential Regulations, C. Non-conforming structures, and D. Public View Protection. The Committee and Advisory Members discussed and directed staff to:

- revise Section 20.30.040 sub section C. – strike “Director” and add “review authority”
- revise Section 20.30.050 subsection A.3.a. - add “above Mean Sea Level” and clarify
- revise Section 20.30.050 subsection B.2.c. – add language after to mixed-use zoning districts to clarify that it includes those with residential components
- revise high rise height map to remove North Newport Center PC
- revise Section 20.30.090 subsection D.2.c. – re-look at this section and possibly revise regarding Mariners Mile
- revise Section 20.30.050 – for airport area make height limit 200 feet above mean sea level, strike “above existing grade” and add “above mean sea level” in 20.30.050 subsection D.2. Confirm requirements with ALUC staff
- revise Section 20.30.030 subsection B.1. and 2. to combine into one paragraph
- retain Section 20.50.040 subsection H. from the draft code with no changes
- revise Section 20.50.040 subsection E. to clarify that all seismic retrofits are ok and add to the beginning of the section “ notwithstanding the provisions of subsection D. above”

- revise Section 20.50.040 to address alley setback changes discussed previously
- revise Figure 3-6 Rear Setback Areas on Irregularly-Shaped Lots – graphics are confusing and revise Section 20.30.090 subsection B.5.b. to clarify that the rear lot line is at least 10 feet long but the minimum setback is 10 feet
- delete Section 20.30.080 subsection D.
- look at the following approach for public views protection section – put with cultural resource protection into a expanded CEQA policy and define local thresholds of significance

The public provided the following comments:

- should consider providing allowing additional amenities for projects that provide ample public view protection

Vote: Consensus

3. Agenda Item No. 3 – Items for Future Agenda

Provide update on CLUP amendments and the following agenda items: bluff and canyon standards, natural resource protection, parking standards, and coastal access.

Meeting Adjourned 5:55 p.m.

ATTACHMENT NO. 2

Draft Zoning Code Review

Agenda Item 2A

Development on Bluffs and Canyons

Bluff and Canyon Development

- Existing Code: None
- Draft Code: new section to provide provisions for regulating development on and adjacent to bluffs and canyons.
- Following are the draft Development on or Abutting Bluffs and Canyons code section, General Plan policies related to bluff and canyon development and bluff and canyon location map

20.xx.xxx - Development on or Abutting Bluffs and Canyons

This Section provides standards to protect and enhance, where feasible, the scenic and visual qualities of bluffs and canyon slopes and to ensure public safety by designing and siting development appropriately.

- A. Applicability.** This Section applies to lots that abut or contain bluffs or canyons, as depicted in the Predominant Line of Development Map (Figure xx) in Part 8 (Maps).
- B. Development standards.** Development shall be sited within the allowable development areas identified by this Subsection or as modified in compliance with Subsection C (Modification of development areas), below.
1. **Cameo Shores and Shorecliffs.** Principal structures shall be set back a minimum of 25 feet from the bluff edge. Accessory structures requiring foundations including pools and spas shall be set back a minimum of 10 feet from the bluff edge. Structures on and alterations (grading) to the bluff face are prohibited, except for above-grade access stairs or trails to the base of the bluff.
 2. **Ocean Boulevard East (3200 through 3700 blocks).** Principal structures may be constructed on the bluff face and shall not extend below the 48-foot, MSL NAVD88 contour. Accessory improvements may be constructed on the bluff face and shall not extend below the 33-foot, MSL NAVD88 contour. Structures on and alterations (grading) to the bluff face below the 33-foot, MSL NAVD88 contour are prohibited, except for above-grade access stairs or trails to the base of the bluff.
 3. **Ocean Boulevard West (2400 through 3100 blocks and Breakers Drive).** Principal structures and accessory improvements shall not extend onto the bluff face above existing development. Structures on and alterations (grading) to the bluff face above existing improvements are prohibited.
 4. **Carnation Avenue.** Principal structures and accessory improvements may be constructed on the bluff face and shall not extend below the 50.7-foot, MSL NAVD88 contour. Structures on and alteration (grading) of the bluff face below this contour are prohibited, except for above grade access stairs or trails to the base of the bluff.
 5. **Pacific Drive.** Principal structures and accessory improvements may be constructed on the bluff face and shall not extend below the median elevation of the property or below the 53-foot, MSL NAVD88 contour. No new vehicular access shall be allowed from Bayside Drive.
 6. **Irvine Terrace (Dolphin Terrace and Bayadere Terrace).** Principal structures and accessory improvements may be constructed on the bluff face and shall not extend below an elevation that is 13 feet below the average elevation of the top of the curb abutting the lot. Structures on and

alterations (grading) to the bluff face below this elevation are prohibited. Principal structures shall set back a minimum of 10 feet from the existing bluff edge or in compliance with setbacks established by Variance No. 162 depicted on the Setback Maps (See Part 8, Figure x). No new vehicular access shall be allowed from Bayside Drive.

7. **Upper Newport Bay.** Principal structures and accessory improvements shall not be located closer to the bluff edge than the minimum setbacks depicted on the Setback Maps (See Part 8 (Maps), Figure x). Structures on and alterations (grading) to the bluff face are prohibited.
8. **Other areas.** The following standards apply to the development of principal structures and accessory improvements on lots containing bluffs not within the geographic areas specified in Paragraphs 1-7, above.
 - a. **Bluffs subject to marine erosion.** Development of principal structures shall be set back a minimum of 25 feet from the bluff edge. Accessory structures requiring foundations, including pools and spas, shall be set back a minimum of 10 feet from the bluff edge. Structures on and alterations (grading) to the bluff face are prohibited.
 - b. **Bluffs not subject to marine erosion.** Development shall be set back from the bluff edge in compliance with the predominant line of existing development. Structures on and alterations (grading) to the bluff face are prohibited.

C. Development standards for lots adjacent to canyons.

1. **Standards.** Development of principal structures and accessory improvements within Buck Gully and Morning Canyon shall not daylight on the canyon slope below an elevation that is the prescribed number of feet below the average elevation of the top of the curb abutting the lot, as shown in Table 3-xx (Vertical Elevation Limits that Establish Development Areas for Lots Adjacent to Canyons). Also see Figure 3-xx (Construction Development Limit Along Canyon Face). In cases where there is no curb, the average elevation of the centerline of the abutting street shall be used.
2. **Modifications.** The development area may be modified in compliance with Subsection C (Modification of development areas), below.
3. **Exceptions.** In cases where the application of the vertical limit provides a development area that is less than 55 feet measured horizontally from the front property line, the development area may be increased up to 55 feet and development may extend below the maximum specified vertical limit.

Table 3-xx
Vertical Elevation Limits that Establish Development Areas
for Lots Adjacent to Canyons

<i>See</i>	Geographic Areas <i>Map (Figure xx) in Part 8 (Maps).</i>	Vertical limit
Buck Gully		
	Cabrillo Terrace	2 feet
	Columbus Circle	8 feet
	Cortes Circle	4 feet
	De Sola Terrace	18 feet
	Evening Canyon Road	12 feet
	Hazel Drive (North of Coast Hwy.)	15 feet
	Hazel Drive (South of Coast Hwy.)	20 feet
	Isabella Terrace	10 feet
	Mendoza Terrace	10 feet
	Poppy Avenue (600 and 700 blocks)	10 feet
Morning Canyon		
	Milford Drive	2 feet
	Morning Canyon	10 feet
	Rockford Place	4 feet
	Rockford Road	4 feet
	Seaward Road	8 feet

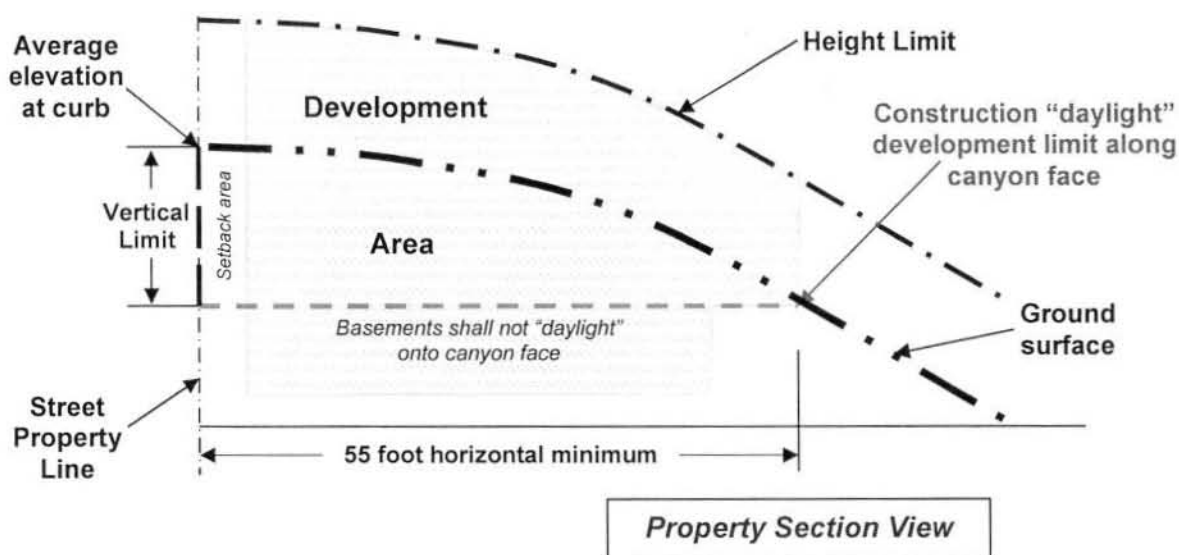


Figure 3-xx
Construction Development Limit Along Canyon Face

D. Modification of development areas.

1. **Reduction of development area.** The development area shall be reduced whenever necessary to:
 - a. Ensure safety and stability against slope failure (i.e., landsliding) for the economic life of a development. At a minimum, the development area shall be adjusted to ensure a slope stability factor greater than or equal to 1.5 at the end of the economic life of the development for the static condition of the bluff or canyon or a factor of safety greater than or equal to 1.1 for the seismic condition of the bluff or canyon, whichever is further landward; and
 - b. Ensure that the principal structures are safe from hazards due to erosional factors for the economic life of the building.
2. **Increase of development areas.** The bluff or canyon development area may be increased when all of the following conditions exist:
 - a. The increased bluff or canyon development area shall ensure a slope stability factor safety greater than or equal to 1.5 at the end of the economic life of the development for the static condition of the bluff or canyon or a factor of safety greater than or equal to 1.1 for the seismic condition of the bluff or canyon, whichever is further landward; and

- b. The increased bluff or canyon development area will provide adequate protection from erosion for the economic life of the development, and.
 - c. Development within the increased bluff or canyon development area is within the predominant line of existing development.
- E. **Development outside the allowed development areas.** No structures or grading shall be allowed outside the development areas established by Subsections A and B, above, except for approved above-grade access stairs or trails to the base of the bluff or canyon and landscaping and temporary irrigation provided they meet all applicable standards of this Code.
- F. **Planned communities.** Development located within a planned community that abuts or includes bluffs or canyons shall comply with the standards established for the planned community.

General Plan Bluff and Canyon Policies

NR 23.1 Maintenance of Natural Topography

Preserve cliffs, canyons, bluffs, significant rock outcroppings, and site buildings to minimize alteration of the site's natural topography and preserve the features as a visual resource. *(Imp 2.1)*

NR 23.2 Bluff Edge Setbacks

Maintain approved bluff edge setbacks for the coastal bluffs within the communities of Castaways, Eastbluff, Park Newport, Newporter North (Harbor Cove), and Bayview Landing and neighborhoods from Jamboree Road to Corona del Mar, north of Bayside Drive, to ensure the preservation of scenic resources and geologic stability.

NR 23.4 New Development on Blufftops

Require all new blufftop development located on a bluff subject to marine erosion to be set back based on the predominant line of development. This requirement shall apply to the principal structure and major accessory structures such as guesthouses and pools. The setback shall be increased where necessary to ensure safety and stability of the development. *(Imp 2.1)*

NR 23.5 New Accessory Structures on Blufftops

Require new accessory structures, such as decks, patios and walkways, that do not require structural foundations to be sited at least 10 feet from the edge of bluffs subject to marine erosion. Require accessory structures to be removed or relocated landward when threatened by erosion, instability or other hazards. *(Imp 2.1)*

NR 23.6 Canyon Development Standards

Establish canyon development setbacks based on the predominant line of existing development for Buck Gully and Morning Canyon. Do not permit development to extend beyond the predominant line of existing development by establishing a development stringline where a line is drawn between nearest adjacent corners of existing structures on either side of the subject property. Establish development stringlines for principle structures and accessory improvements. *(Imp 2.1, 6.1)*

NR 23.7 New Development Design and Siting

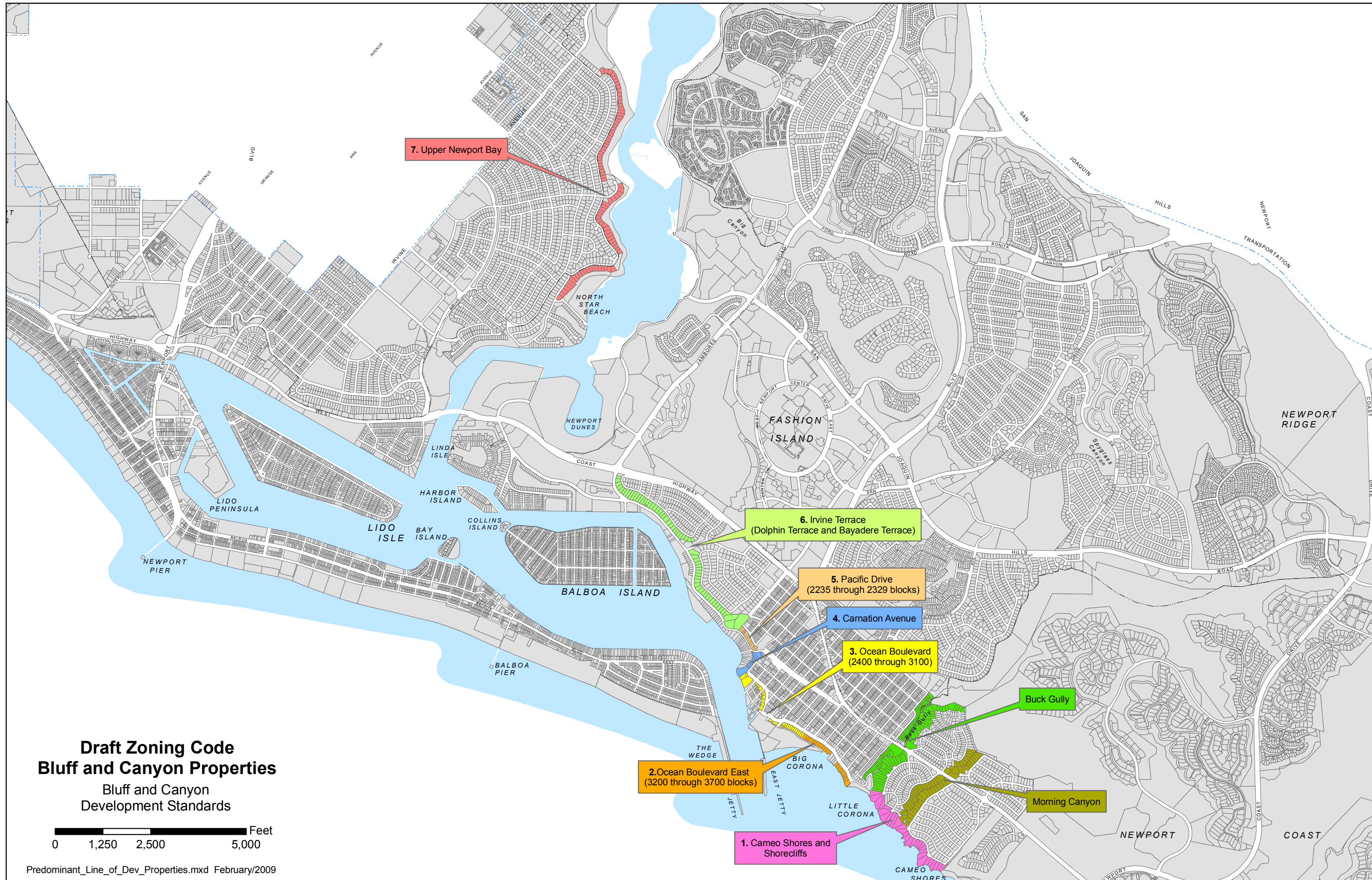
Design and site new development to minimize the removal of native vegetation, preserve rock outcroppings, and protect coastal resources. *(Imp 2.1)*

Draft Zoning Code Bluff and Canyon Properties

Bluff and Canyon
Development Standards

0 1,250 2,500 5,000 Feet

Predominant_Line_of_Dev_Properties.mxd February/2009



Agenda Item 2B

Environmental Study Areas

- Existing Code: None
- Draft Code: new section to provide provisions for regulating development within and for certain properties adjacent to Environmental Study Areas (ESA) as identified on General Plan Figure NR-2.
- Chapter has been substantially re-written from version in public review draft code so, track changes has not been used.
- Following are the draft code section, General Plan polices related to ESA's and General Plan Figure NR-2

20.xx.xxx – Environmental Study Areas

This Section provides standards to protect, where feasible, sensitive or rare natural resources against significant disruption of habitat values.

A. Applicability.

1. This Section applies to the following:
 - a. Lots in nonresidential zoning districts that are adjacent to or include any portion of an Environmental Study Area (ESA), as identified in General Plan Figure NR-2 (Environmental Study Areas); and
 - b. Lots in residential zoning districts that are adjacent to one of or include any portion of ESA 10 (Buck Gully), ESA 11 (Morning Canyon), ESA 28 (Non-Coastal Buck Gully).
 - c. Subdivisions that are adjacent to or include any portion of an Environmental Study Area (ESA).
2. This Section does not apply to the following:
 - a. Lots in any adopted planned community; and
 - b. Lots in residential zoning districts that are adjacent to one of or include any portion of an ESA No. 1 through 9 and 12-27.

B. Determination of environmentally sensitive areas. Each applicable permit application, including applications for Zoning Clearances, shall include the information required in this Subsection.

1. **Initial biological resources survey.** Applicable permit applications for new development shall include an initial biological resources survey that indicates the presence of sensitive habitat or species on the site. The survey shall be prepared by a qualified professional and shall include the information and materials specified by the Director, together with the required fee in compliance with the City's Master Fee Schedule.
2. **Biological resources impact report.** If the initial biological resources survey indicates the presence of sensitive habitat or species on the site, an applicant shall submit a detailed biological resources impact report. The biological resources impact report shall be prepared by a qualified professional and shall include the information and materials specified by the Director.

C. Allowed activities and uses. Activities and uses allowed in ESA's and buffer areas shall be determined by the review authority based upon the recommendation(s) contained in the biological resources impact report.

D. Development standards.

1. **Buffer areas.** The review authority shall require buffers of sufficient size around environmentally sensitive areas, if present, to ensure their protection. Buffer size shall be determined based on the recommendations contained in the the biological resources impact report.
2. **Fencing.**
 - a. During and after construction, fencing shall be installed in compliance with the recommendations in the biological resources impact report to minimize adverse impacts on sensitive areas.
 - b. Fencing shall not impact the free passage of native wildlife and shall be compatible with the visual and biological character of the habitat.
3. **Site planning and design.**
 - a. Development shall be designed and sited to:
 - (1) Protect against any significant disruption of habitat values;
 - (2) Avoid the need to extend fuel modification zones into sensitive areas; and
 - (3) Ensure the continued viability of sensitive resources.
 - b. Land divisions, including lot line adjustments or lot mergers, shall be designed to avoid new development within sensitive areas and to minimize adverse impacts to sensitive areas.
4. **Erosion and sediment control.** Erosion and sediment controls, including best management practices (BMPs) to minimize siltation, sedimentation, and erosion, shall be installed before and during construction and shall be left in place until the site is stabilized with permanent vegetation.
5. **Habitat restoration or creation.** The review authority may require the restoration or creation of habitat to mitigate the impacts of a proposed development. Requirements may include submittal and approval of:
 - a. A restoration and monitoring plan that specifies the area to be restored, the method of restoration, and the duration of maintenance and monitoring activities; and
 - b. A performance guarantee in compliance with Section 20.68.060 (Performance Guarantees) to ensure restoration and monitoring of the effort.

6. **Evidence of compliance with other federal, state, regional, and local requirements.** Before development commences, the applicant shall submit the evidence of compliance with other federal, state, regional, and local agency requirements including the following:
 - a. Section 404 Permit (or its equivalent successor) from the U.S. Army Corps of Engineers;
 - b. Letter from the California Department of Fish and Game confirming compliance with Section 1602 of the Fish and Game Code (or its equivalent successor);
 - c. Plans to mitigate construction impacts and/or payment of mitigation fees in compliance with the requirements imposed as a result of the City's participation in the Natural Community Conservation Plan (NCCP). As a signatory agency, the City is responsible for enforcing mitigation measures and other policies identified in the NCCP/Habitat Conservation Plan Implementation Agreement for properties located within the City Limit that are part of the NCCP Subregional Plan; and
 - d. Other approvals as required by the Director.
7. **Removal of unauthorized structures.** Unauthorized structures shall be removed before issuance of any permit.
8. **Subdivisions.** If an environmentally sensitive area is identified within the boundaries of a proposed subdivision, the sensitive area shall be shown on the Tentative Map and offered for dedication to the City. When a sensitive area is already in existence at the time a Tentative Map is filed, the status of the sensitive area, whether public or private, shall be identified on the Tentative Map.

General Plan Policies:

LU 3.7 Natural Resource or Hazardous Areas Require that new development is located and designed to protect areas with high natural resource value and protect residents and visitors from threats to life or property.

NR 10.3 Analysis of Environmental Study Areas Require a site-specific survey and analysis prepared by a qualified biologist as a filing requirement for any development permit applications where development would occur within or contiguous to areas identified as ESAs.

NR 10.4 New Development Siting and Design Require that the siting and design of new development, including landscaping and public access, protect sensitive or rare resources against any significant disruption of habitat values.

NR 10.5 Development in Areas Containing Significant or Rare Biological Resources Limit uses within an area containing any significant or rare biological resources to only those uses that are dependent on such resources, except where application of such a limitation would result in a taking of private property. If application of this policy would likely constitute a taking of private property, then a non-resource-dependent use shall be allowed on the property, provided development is limited to the minimum amount necessary to avoid a taking and the development is consistent with all other applicable resource protection policies. Public access improvements and educational, interpretative and research facilities are considered resource dependent uses.

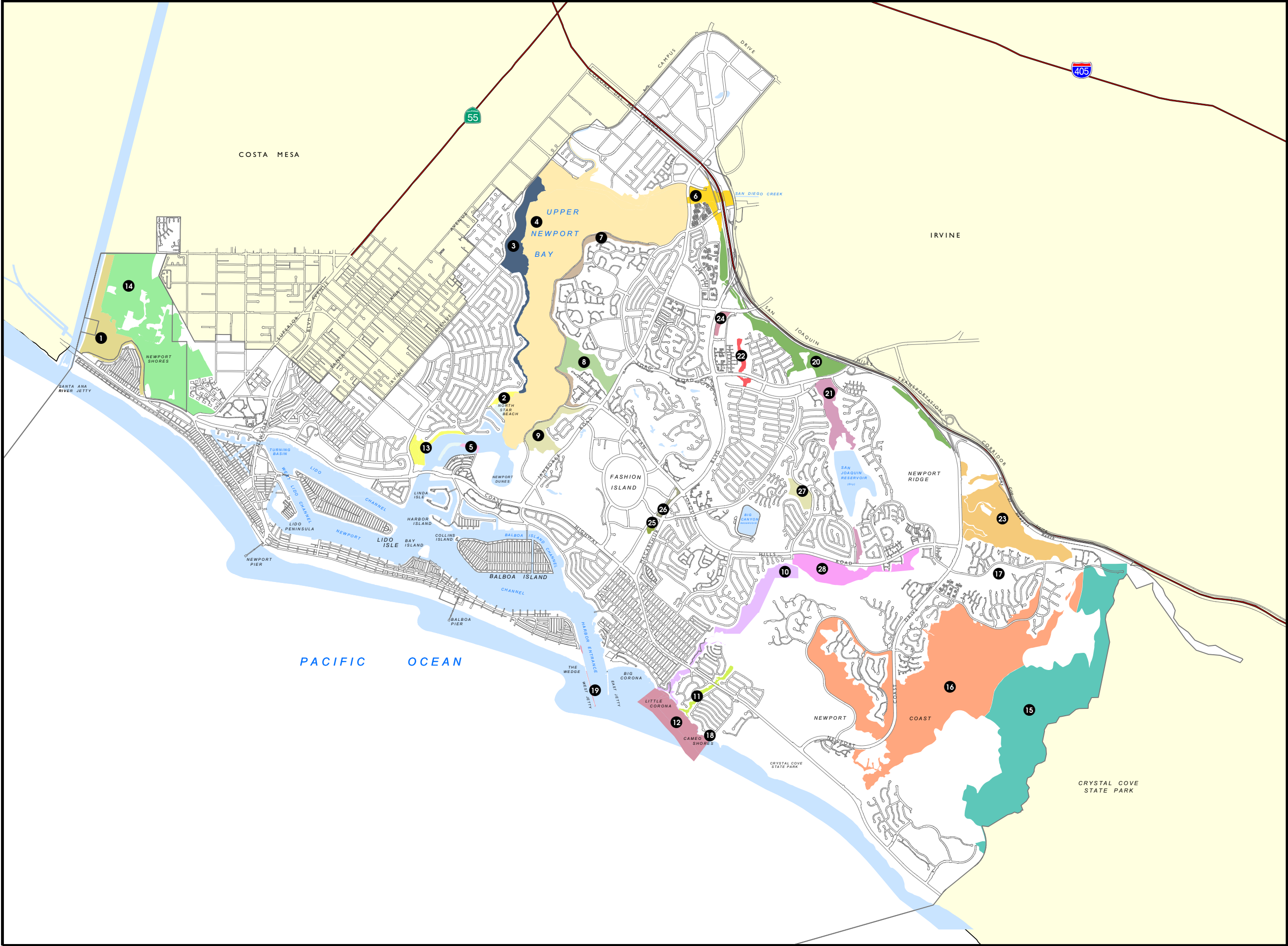
NR 10.6 Use of Buffers Maintain a buffer of sufficient size around significant or rare biological resources, if present, to ensure the protection of these resources. Require the use of native vegetation and prohibit invasive plant species within these buffer areas.

NR 10.7 Exterior Lighting Shield and direct exterior lighting away from significant or rare biological resources to minimize impacts to wildlife.

NR 12.1 Exotic Vegetation Removal and Native Vegetation Restoration Require the removal of exotic vegetation and the restoration of native vegetation in dune habitat.


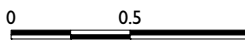
NR 13.1 Wetland Protection Recognize and protect wetlands for their commercial, recreational, water quality, and habitat value.

NR 13.2 Wetland Delineation Require a survey and analysis with the delineation of all wetland areas when the initial site survey indicates the presence or potential for wetland species or indicators. Wetland delineations will be conducted in accordance with the definitions of wetland boundaries established by California Department of Fish and Game, and/or United States Fish and Wildlife Service.



CITY of NEWPORT BEACH
GENERAL PLAN
Figure NR2
ENVIRONMENTAL
STUDY AREAS

- 1 Seminuk Slough
- 2 Northstar Beach
- 3 West Bay
- 4 Upper Newport Bay State Marine Park and Upper Newport Bay Nature Preserve
- 5 De Anza Bayside Marsh Peninsula
- 6 San Diego Creek
- 7 Eastbluff Remnant
- 8 Big Canyon
- 9 Newporter North
- 10 Buck Gully
- 11 Morning Canyon
- 12 Newport Beach Marine Life Refuge
- 13 Castaways
- 14 Banning Ranch
- 15 Newport Coast
- 16 Los Trancos, Pelican Hill
- 17 Ridge Park
- 18 Irvine Coast Marine Life Refuge
- 19 Giant Kelp Bed in Newport Harbor Entrance Channel
- 20 Bonita Canyon Creek Watershed
- 21 San Joaquin Reservoir
- 22 Arroyo Park
- 23 Coyote Canyon
- 24 MacArthur and Bison
- 25 MacArthur/SanMiguel
- 26 MacArthur/SanJoaquin
- 27 Spyglass Hill
- 28 Non-Coastal Buck Gully



Miles

Source: City of Newport Beach, 2005
PROJECT NUMBER: 10579-01
Date: 7/13/06



Agenda Item 2C

Parking - Eating and Drinking Establishments

After reviewing the Walker parking study, staff recommends maintaining the majority of the existing code parking ratio requirements for eating and drinking establishments, while using the revised eating and drinking establishment classifications. The existing parking ratio range for Food Service enables the flexibility that is important in meeting the needs of the wide variety of food services for visitors and locals alike given the unique parking challenges embedded in the differing Newport Beach neighborhoods. Staff recognizes that in some instances, the net public area of a restaurant is determined by how many parking spaces can be accommodated on site resulting in restaurants with larger than needed kitchens and storage areas. However, staff believes the benefit of flexibility outweighs the imposition of "one size-fits all" standard based on gross floor area. The consequences of a "one-size-fits-all" standard may be more requests for parking waivers which, may discourage the development or redevelopment of restaurants if large parking waivers are required. The following table (with the references below) provides a comparison of the similar use categories (existing code vs. draft code) and parking requirement. The table is followed by the Parking Requirement for Food Service code section.

Parking Requirements

Existing Code	Draft Code
Full Service High/Low Turnover - 1 per 30-50 sq. ft. net public area (npa); Full Service Small Scale - 1 per each 3 seats or 1 per 75 sq. ft. npa	Food Service – 1 per 30-50 sq. ft. npa
Bars/Lounges – 1 per 30-50 sq. ft. npa	Bars/Lounges Nightclubs – 1 per 4 persons (occupancy load) or per CUP * new parking requirement

** For reference, use descriptions follow draft parking code language below

Section 20.52.XXX Parking Requirement for Food Service

The applicable review authority shall establish the off-street parking requirement for Food Service uses within a range of one space for each **30 to 50 square feet of net public area** based upon the following considerations:

The physical design characteristics of the use including:

- a. The portion of net public area designated for dining, cocktails or dancing.

- b. The number of tables or seats and their arrangement.
- c. Other areas that should logically be excluded from the determination of net public area.
- d. The parking lot design, including the use of small car spaces, tandem and valet parking and loading areas.
- e. Availability of guest dock space for boats.
- f. Extent of outdoor dining.
- g. the gross floor area of the building or tenant space (new).
- h. the area of the kitchen (new).

Operational characteristics, including:

- a. the amount of floor area devoted to live entertainment or dancing.
- b. The amount of floor area devoted to the sale of alcoholic beverages.
- c. The presence of pool tables, big screen televisions or other attractions.
- d. The hours of operation.

The location of the establishment:

- a. In relation to other uses and the waterfront.
- b. Availability of off-site parking nearby.
- c. Amount of walk-in trade.
- d. Parking problems in the area at times of peak demand.

If during the review of the use permit, the Planning Commission uses any of the preceding considerations as a basis for establishing the parking requirement, the substance of such considerations shall become conditions of the use permit and a change to any of these conditions will require an amendment to the use permit, which may be amended to establish parking requirements within the range as noted above.

FOLLOWING ATTACHMENTS RECEIVED AFTER
MEETING

From: Don Krotee [mailto:dkrotee@krotee.com]

Sent: Wednesday, February 18, 2009 4:13 PM

To: Olson, Gaylene; Bunting, Steve; Sinacori, Mike; Harmon, Mark; Planning; Daigle, Leslie; Don Webb; Eaton, Barry; Harp, Aaron; Hawkins, Robert; Hunt, David; Campbell, James; Lepo, David; Ramirez, Gregg; Selich, Edward; Badum, Steve; Toerge, Michael; Wood, Sharon; Brion Jeannette; Dennis Wood; ian.harrison@cox.net; Kevin Weeda; Larry Frapwell; Mark Cross ; skooooler@aol.com; William Guidero ; Albert A. Newton; Allison Schneider; Bernie Svalstad - CDM BID; BJ Johnson; Bob Black; Bruce Jacobson; Bryan Starr; Carol McDermott; Cora Newman; Dan Miller; Danielle Diestel; Dave Bartlett; Deborah Larson; DeDe Soto; Delores Otting; Dennis O'Neil ; dhewittsf@hotmail.com; Dick Nichols; Doug Beiswenger; George Schroeder; Gordon Glass; Hunter Oliver; Jake Cisneros; Jan Vandersloot; Jesse Johnston; Jim Walker; john@saunderspropertyco.com; Joyce Nugent; Kathy Crum; kcruse@sunstonehotels.com; Kimberly Foreman; Laura Stearns; Lennie DeCaro; Linda Leonhard; lindat@kennedycommission.org; Lisa Vallejo ; M Murrell; Michael Gelfand; Michael Hoskinson; Michael Porter; merickson@rbf.com; pallen@lw-oc.com; Patti Mickey; Peggy Fort; Richard Julian; Richard Luehrs; Ron Hendrickson; Ron Pflugrath; Scott Meserve; Beek, Seymour; shaoulia@gmail.com; Sheri Drewry; sledwards@omm.com; Sydney Head; Tim Stoaks; tmathews@caaplanning.com; tpaone@manatt.com

Subject: RE: GP/LCP Implementation Committee Meeting Agenda for 01-28-09

Gaylene: Thanks for the information. I was not able to make today's meeting but, I did have a comment for the record. In regard to the establishment of the PLOED, I'd like the group to adopt (where can be decided by the committee) this important policy or zoning reg that would allow the PLOED be natural and not 'replaced-man made ground or area'. Thanks for distributing this.

Don Krotee

Donald Krotee Partnership, Inc.

230 N. Bush Street

Santa Ana, CA 92701

Voice: 714/547-7621

In consideration of the preservation of bluffs established by PLOED
February 18, 2009

The PLOED as established shall be able to be self supporting and not be affected by the activities of construction reasonably employed to construct the project structural systems in the area of the PLOED. Where such PLOED intersects the bluff and that point is not sustainable and unable to remain intact through construction, a setback from that intersection measured to the buildings nearest point of construction shall be provided to ensure the wellbeing and protection of the bluff. Since the policy and the development of the PLOED are to provide a point to be preserved, such PLOED shall remain natural and not be subject to reconstruction. A reasonable setback to the PLOED shall be provided to allow for construction of the project without jeopardizing the bluff in the area of the PLOED.

Schematic Cross Section



February 18, 2009

RECEIVED BY
PLANNING DEPARTMENT

FEB 20 2009

CITY OF NEWPORT BEACH

Mr. Gregg Ramirez
& GP/LCP Implementation Committee
City of Newport Beach
3300 Newport Blvd.
Newport Beach, CA 92663

**Re: Zoning Code Review
Public View Protection
Bayside Village & Marina
300 E. Coast Highway**

Dear Mr. Ramirez:

As the representative for Bayside Village & Marina, I wanted to formally note in the record our concerns with 20.30.80 Public View Protection (New) section of the proposed zoning code. As we testified at the GP/LCP Implementation Committee on January 28, 2009, our property abuts one of the public view points identified along Coast Highway. Given this factor, we are hopeful that as this code section moves forward it can be further clarified and amended.

Our concerns are as follows:

- 1) A. Applicability. This section identifies a number of landmarks that may require protection, such as parks, coastal and inland bluffs, canyons, mountains, wetlands, and permanent passive open space.

Our specific concern as it relates to this section is, has the city clearly identified and mapped every bluff, canyon, mountain, wetland and permanent passive open space so that a property owner can clearly understand what "views" need to be analyzed.

If, in a case, where a property may have many of these elements in its viewshed, which view takes precedent? How will it get analyzed in the context of this section of the code?

- D. Project design and siting. "Projects subject to this section shall be designed and sited to minimize impacts to public views. This may be done by incorporating setbacks that, in conjunction with setbacks on adjacent properties, will form public view corridors or by clustering buildings, providing greater setbacks from adjacent development or other design features that minimize impacts."

Our request as it relates to this specific section is that additional language be added which would also give credit to those properties that can improve coastal access and public views through providing greater access to significant view corridors. In the Bayside Village's case, there is a potential opportunity to greatly improve public access around the Back Bay which thereby would create new and improved public view corridors.

Thanks for your assistance on this matter. We look forward to your feedback.

Sincerely,

A handwritten signature in cursive script, reading "Coralee S. Newman".

Coralee Newman
Government Solutions, Inc.
Bayside Village & Marina - Property Owner's Representative

Item 2A - Development on Bluffs and Canyons

Eaton Comments – responses in *bold italics*

179) The first Subsection A. (hand numbered page 8) refers to the "Predominant Line of Development Map". The only map attached for this topic is a new "Bluff and Canyon Properties" Map. Is this what subsection A is intending to refer to?

Response: Yes, but we will change the reference to the "Bluff and Canyon Properties" Map.

180) Subsection B (on hand numbered page 8) and Subsection C.2. (on hand numbered page 9) refer to "Subsection C ". It appears that the intended reference was to subsection D. Is that correct?

Response: Yes, we will correct the reference.

181) Subsection B.3. (on hand numbered page 8), in dealing with properties along Ocean Boulevard, refers to "above existing development", and then to "above existing improvements". Are these the same thing? And what, specifically do they refer to? And how does whatever they are referring to relate to street grade, which is so important along Ocean Boulevard?

Response: Yes. "Existing improvements" refers to both principal structures and accessory improvements. This subsection would not permit any new encroachment on the bluff face. We will change the references to "structures." Building height would remain limited by the street elevation by the height regulations.

182) Subsection B.5. (on hand numbered page 8), in dealing with properties along Pacific Drive, refers to "median elevation of the property". Is it specified anywhere how this is calculated? Is there a difference for those properties that don't extend all the way down to Bayside Drive?

Response: The median elevation will be determined by identifying the highest and lowest elevation of the property and simply identifying the middle elevation. In this case, the median is the average and will use average as it is a more common term.

183) Subsection B.6. (on hand numbered pages 8 & 9), in dealing with properties along Dolphin Terrace and Bayadere Terrace in Irvine Terrace), states that structures shall not extend below an elevation equal to 13 feet below the top of curb adjacent to the lot. How was this number derived? Are there properties in

Irvine Terrace that already extend below this elevation? If so, about how many, and do they all become nonconforming structures?

Response: Thirteen feet was identified based upon recent projects that have excavated below the existing residence to accommodate one additional level. The resulting daylight line is comparable with recent developments and is consistent with owner expectations and HOA input. A few lots have excavated below this level, but most have not.

184) The same subsection refers to "Variance No. 162 depicted on the Setback Maps". I don't think I have ever seen this. Is it anywhere in our materials? If not, can you bring it to the meeting, so that we may acquaint ourselves with it?

Response: We will bring an exhibit to the meeting.

185) Subsection B.8.a. & b. (on hand numbered page 9) distinguish between "Bluffs subject to marine erosion" and other Bluffs. Are these two types of bluffs defined or delineated somewhere, so that applicants know which they may have? If so, where?

Response: Bluffs subject to marine erosion are those that are currently affected by and subject to wave or tidal action. This will be defined.

186) Subsections B.8.b. and subsection D.2.c. (on hand numbered page 12) both refer to the "predominant line of existing development" (PLOED). I know that we established that line for the AERIE project (after a great deal of discussion, and alternate theories about how it should be applied in that case); but has a methodology been developed to apply it in whatever other cases may fall within these subsections? Is it applied vertically, or horizontally, or a combination thereof? Is it clear how this concept will be applied?

Response: Subsection B.8.b only applies to "other" bluff areas and was included for future areas identified. Other areas that should be included in Subsection B.8 are Kings Road, Kings Place and Cliff Drive.

Subsection D.2.c is a "test" only applicable when a property owner requests a larger development area than prescribed in Subsection B. The provisions in Subsection B identify the PLOED as a "build to" line provided the geology, slope stability and erosion rate support it. That evaluation is done at the building permit stage. If a property owner seeks additional development area, we have this same test to find and we have to verify that the resulting development respects the predominate development pattern (i.e. does it fit the development pattern even with a larger development area).

187) Subsection C.3. (on hand numbered page 9), in dealing with Canyon adjacencies, apparently states that the standards that would otherwise be applied can be modified to whatever extent is necessary to provide for a horizontal 55 foot deep "development area". How was 55 feet arrived at, and what does "development area" mean?

Response: The "development area" is the area where that development can occur and it would be measured horizontally from the front property line. Development beyond it will be significantly limited (i.e. temporary irrigation, a trail, a bench and native landscaping...no other structures). Fifty-five feet was derived based upon existing development patterns to ensure that replacement of existing structures was accommodated.

188) The table on hand numbered page 10 contains a whole series of different standards that apply to different specific locations along canyon edges, ranging from 2 feet to 20 feet. How were all these different standards derived, and why are they so disparate?

Response: They were derived at based upon the differing development patterns and disparate topographic settings. In essence, we identified an approximate development limit on the canyon face that would accommodate existing homes and usable yards and then we benchmarked it to the abutting curb elevation to provide a clear and unambiguous standard. Nonconformities are minimized if not eliminated.

189) Subsections D.1.a. and D.2.a. (on hand numbered page 11) both refer to "1.1 for the seismic condition". I don't understand what this means. Could you please explain this?

Response: Yes, but only the geologists and engineers truly appreciate and understand what goes into these ratios. These ratios are customary and appropriate for these.

Hawkins Comments – responses in *bold italics*

HANDWRITTEN PAGE 8 20.xx.xxx - Development on or Abutting Bluffs and Canyons

This Section provides standards to protect and enhance, where feasible, the scenic and visual qualities of bluffs and canyon slopes and to ensure public safety by designing and siting development appropriately. PQ: Much of this chapter attempts to deal with set backs in the coastal zone. I thought we were not moving forward on those issues. If we are, then other issues need to be addressed including public access, visitor serving, bluff preservation and a whole host of other coastal issues.

Response: The General Plan necessitates the development standards for bluffs and canyons for the entire city. Other issues would be addressed in separate chapters or sections of the code.

Applicability. This Section applies to lots that abut or contain bluffs or canyons, as depicted in the Predominant Line of Development Map (Figure xx) in Part 8 (Maps). PQ: Aren't all of these lots in the Coastal Zone? I thought we weren't considering these. Also, what about the bluffs from Dover to West Newport including bluffs in Banning Ranch?

Response: All of the specific areas identified are in the Coastal Zone and General Plan policy requires us to consider coastal areas. Areas outside of the Coastal Zone would be covered by "other areas" and the areas that may need discussion are Kings Road, Kings Place, Cliff Drive. Banning Ranch will have a separate regulatory framework and must be consistent with the General Plan.

A.

Development standards. Development shall be sited within the allowable development areas identified by this Subsection or as modified in compliance with Subsection C (Modification of development areas), below. PQ: What are the principles by which you propose different set backs? Why not a uniform set back like all other areas? If not, then you should explain why we are making these distinctions.

Response: The standards differ due to differing development patterns and disparate topographic settings.

B.

1. **Cameo Shores and Shorecliffs.** Principal structures shall be set back a minimum of 25 feet from the bluff edge. Accessory structures requiring foundations including pools and spas shall be set back a minimum of 10 feet from the bluff edge. Structures on and alterations (grading) to the bluff face are prohibited, except for above-grade access stairs or trails to the base of the bluff.
2. **Ocean Boulevard East (3200 through 3700 blocks).** Principal structures may be constructed on the bluff face and shall not extend

below the 48-foot, MSL NAVD88 contour. PQ: I asked about these abbreviations last meeting. Why are we continuing to use these abbreviations without explanation? Also, it is hard to understand how these work without a map or some reference to the property line. Accessory improvements may be constructed on the bluff face and shall not extend below the 33-foot, MSL NAVD88 contour. Structures on and alterations (grading) to the bluff face below the 33-foot, MSL NAVD88 contour are prohibited, except for above-grade access stairs or trails to the base of the bluff.

Response: *NAVD88 is a defined term and MSL is mean sea level. We can include a definition of MSL. We can also spell these terms out once, identify the acronym and use the acronym thereafter.*

3. Ocean Boulevard West (2400 through 3100 blocks and Breakers Drive).

Principal structures and accessory improvements shall not extend onto the bluff face above existing development. Structures on and alterations (grading) to the bluff face above existing improvements are prohibited.

PQ: What are we talking about by saying "above existing improvements"?

Response: *This standard will prohibit further alteration of the bluff face above existing improvements*

4. Carnation Avenue. Principal structures and accessory improvements may be constructed on the bluff face and shall not extend below the 50.7-foot, MSL NAVD88 contour. Structures on and alteration (grading) of the bluff face below this contour are prohibited, except for above grade access stairs or trails to the base of the bluff.

3-5. Pacific Drive. Principal structures and accessory improvements may be constructed on the bluff face and shall not extend below the median elevation of the property or below the 53-foot, MSL NAVD88 contour. No new vehicular access shall be allowed from Bayside Drive.

4-6. Irvine Terrace (Dolphin Terrace and Bayadere Terrace). Principal structures and accessory improvements may be constructed on the bluff face and shall not extend below an elevation that is 13 feet below the average elevation of the top of the curb abutting the lot. Structures on and alterations (grading) to the bluff face below this elevation are prohibited. Principal structures shall set back a minimum of 10 feet from the existing bluff edge or in compliance with setbacks established by Variance No. 162 depicted on the Setback Maps (See Part 8, Figure x). No new vehicular access shall be allowed from Bayside Drive.

5-7. Upper Newport Bay. Principal structures and accessory improvements shall not be located closer to the bluff edge than the minimum setbacks depicted on the Setback Maps (See Part 8 (Maps), Figure x). Structures on and alterations (grading) to the bluff face are prohibited. PQ: Where are these maps? Why are we only regulating homes in west Newport but not east Newport?

Response: The new and improved District Maps will be incorporated with the Code and not changes to existing setbacks are proposed.

6-8. Other areas. The following standards apply to the development of principal structures and accessory improvements on lots containing bluffs not within the geographic areas specified in Paragraphs 1-7, above. PQ: Which of these apply to the bluffs from Dover to west Newport?

Response: This standard would apply to any other area worthy of identification. The Committee should discuss identifying Kings Road, Kings Place or Cliff Drive or other areas yet to be identified.

- a. **Bluffs subject to marine erosion.** Development of principal structures shall be set back a minimum of 25 feet from the bluff edge. Accessory structures requiring foundations, including pools and spas, shall be set back a minimum of 10 feet from the bluff edge. Structures on and alterations (grading) to the bluff face are prohibited.
- b. **Bluffs not subject to marine erosion.** Development shall be set back from the bluff edge in compliance with the predominant line of existing development. Structures on and alterations (grading) to the bluff face are prohibited.

C. Development standards for lots adjacent to canyons.

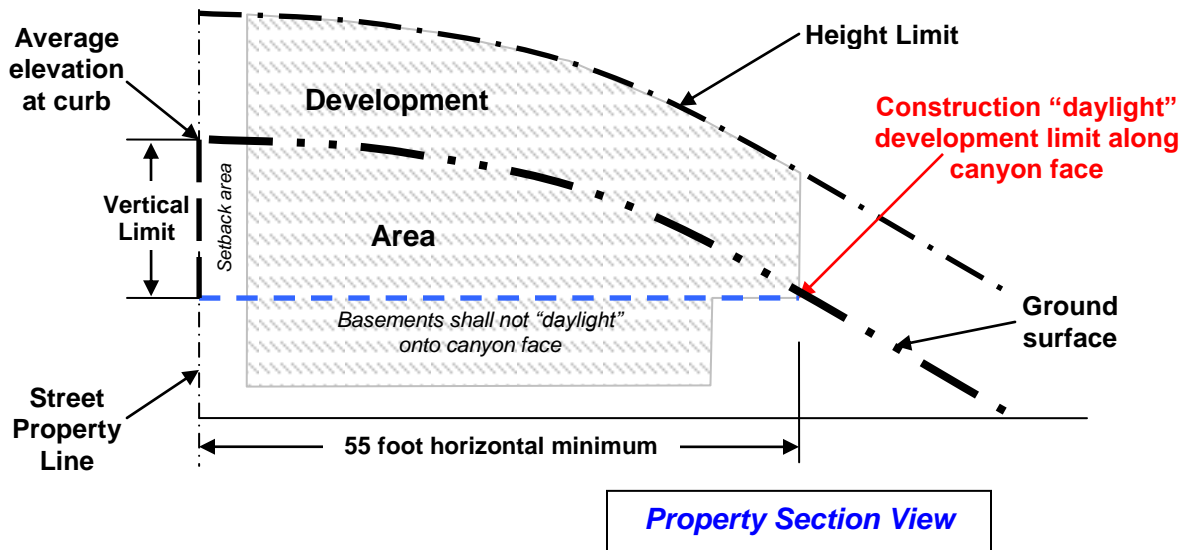
1. **Standards.** Development of principal structures and accessory improvements within Buck Gully and Morning Canyon shall not daylight on the canyon slope below an elevation that is the prescribed number of feet below the average elevation of the top of the curb abutting the lot, as shown in Table 3-xx (Vertical Elevation Limits that Establish Development Areas for Lots Adjacent to Canyons). Also see Figure 3-xx (Construction Development Limit Along Canyon Face). In cases where there is no curb, the average elevation of the centerline of the abutting street shall be used.
2. **Modifications.** The development area may be modified in compliance with Subsection C (Modification of development areas), below.
3. **Exceptions.** In cases where the application of the vertical limit provides a development area that is less than 55 feet measured horizontally from the front property line, the development area may be increased up to 55 feet and development may extend below the maximum specified vertical limit.

HANDWRITTEN PAGE 10

Table 3-xx
Vertical Elevation Limits that Establish Development Areas
for Lots Adjacent to Canyons Why and how are we making these distinctions?

Response: The development pattern and topographic condition vary.

See _____	Geographic Areas Map (Figure xx) in Part 8 (Maps).	Vertical limit
Buck Gully		
	Cabrillo Terrace	2 feet
	Columbus Circle	8 feet
	Cortes Circle	4 feet
	De Sola Terrace	18 feet
	Evening Canyon Road	12 feet
	Hazel Drive (North of Coast Hwy.)	15 feet
	Hazel Drive (South of Coast Hwy.)	20 feet
	Isabella Terrace	10 feet
	Mendoza Terrace	10 feet
	Poppy Avenue (600 and 700 blocks)	10 feet
Morning Canyon		
	Milford Drive	2 feet
	Morning Canyon	10 feet
	Rockford Place	4 feet
	Rockford Road	4 feet
	Seaward Road	8 feet



PQ: Why multiple references to the same line? Please explain and identify the footage for the vertical line.

Response: We can simplify

Figure 3-xx
Construction Development Limit Along Canyon Face

D. Modification of development areas.

1. **Reduction of development area.** The development area shall be reduced whenever necessary to: PQ: Reduced from what?

Response: reduced development area from that identified in Subsections B and C

- a. Ensure safety and stability against slope failure (i.e., landsliding) for the economic life of a development. What are you talking about? Please define. We need crucial terms defined throughout.

Response: Economic Life is defined at 75 years

- b. At a minimum, the development area shall be adjusted to ensure a slope stability factor greater than or equal to 1.5 at the end of the economic life of the development for the static condition of the bluff or canyon or a factor of safety greater than or equal to 1.1 for the seismic condition of the bluff or canyon, whichever is further landward; and
- c. Ensure that the principal structures are safe from hazards due to erosional factors for the economic life of the building.

2. **Increase of development areas.** The bluff or canyon development area may be increased PQ: from what? when all of the following conditions exist:

Response: increased development area from that identified in Subsections B and C

- a. The increased bluff or canyon development area shall ensure a slope stability factor safety greater than or equal to 1.5 at the end of the economic life of the development for the static condition of the bluff or canyon or a factor of safety greater than or equal to 1.1 for the seismic condition of the bluff or canyon, whichever is further landward; PQ: What about engineering fixes which would not compromise the economic life of the development?

Response: We want to ensure that development pursuant to an increased development area (closer to the bluff edge) is safe and free from the need for shoreline protective devices for a minimum of 75 years.

and

- b. The increased bluff or canyon development area will provide adequate protection from erosion for the economic life of the development, and.
- d. Development within the increased bluff or canyon development area is within the predominant line of existing development.

- E. Development outside the allowed development areas.** No structures or grading shall be allowed outside the development areas established by Subsections A and B, above, except for approved above-grade access stairs or trails to the base of the bluff or canyon and landscaping and temporary irrigation provided they meet all applicable standards of this Code. PQ: Don't we want to allow the "Review Authority" to make exceptions?

Response: Yes. The process envisioned is the Site Development Permit under the authority of the Zoning Administrator. In the Coastal Zone implementation plan, this will be a Coastal Development Permit.

- F. Planned communities.** Development located within a planned community that abuts or includes bluffs or canyons shall comply with the standards established for the planned community. PQ: What Planned Communities fall within this exception? Why are we allowing it?

Response: Bluff protection is accounted for in the existing PCs and no new regulation is necessary.